

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

STATE OF MARYLAND,

v.

NORRIS BERNARD ELLIS

Defendant

CRIMINAL NO.: C-10-CR-21-000535

CM

**MOTION TO SUPPRESS MR. ELLIS' CUSTODIAL STATEMENT AND
TO PROHIBIT ITS USE BY THE STATE FOR ANY PURPOSE AT
TRIAL AND REQUEST FOR HEARING**

Comes now the Defendant, Norris Bernard Ellis, by and through counsel, Isabelle Raquin, and the Law Offices of RaquinMercer LLC, and respectfully requests that this Honorable Court suppress his July 19, 2021, custodial statement, and prohibit the State from using it for any purpose at trial, because it was obtained in violation of Mr. Ellis' rights under the Fifth and Fourteenth Amendments of the United States Constitution, and Articles 21, 22, and 24 of the Declaration of Rights of the Maryland Constitution, and Maryland law.

Pursuant to Maryland Rule 4-252(a), undersigned counsel seeks a finding of good cause by the Court to file mandatory motions outside of the timeframe described in Maryland Rule 4-252(b). Undersigned counsel was retained to represent Mr. Ellis and she entered her appearance on November 22, 2021. Discovery was provided on December 6, 2021. There is a large amount of discovery in this case that counsel has diligently been reviewing such that good cause exists for extending the time for counsel to file mandatory motions under Rule 4-252(a).

STATEMENT OF FACTS

Mr. Ellis is charged with First-Degree Rape, First-Degree Assault, and Second-Degree Assault for an incident that occurred on July 4, 2021. On July 19, 2021, Mr. Ellis reported to his

Probation Officer's Office. There, he was told by his agent to submit to a formal interview by Detective Sean McKinney and was subsequently interrogated. Mr. Ellis's statements must be suppressed because (1) Mr. Ellis was not free to leave nor refuse to participate in the interrogation; (2) once advised, Mr. Ellis did not knowingly and voluntarily waive his Miranda rights; and (3) Mr. Ellis's statement was involuntary.

ARGUMENT

The Fifth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, protects individuals from compulsion against self-incrimination. *State v. Luckett*, 413 Md. 360, 376-377, 993 A.2d 25, 34 (2010). The United States Supreme Court embodied this right in *Miranda v. Arizona* requiring law enforcement to advise a suspect that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). See also *Lee v. State*, 418 Md. 136, 149 (2011). As noted by our Court of Appeals, the Supreme Court's concern was rooted in its "recognition that 'incommunicado interrogation' in a 'police-dominated atmosphere,' involves psychological pressures that 'work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'"
Luckett, 413 Md. 360, 377 (2010) (quoting *Miranda*, 384 U.S. at 445)).

Because Mr. Ellis was subjected to custodial interrogation, the State must show that in preceding the interrogation, the police provided Mr. Ellis with proper *Miranda* warnings, and further, that Mr. Ellis understood these warnings and voluntarily waived them. *Id.* at 35. The State must also show that Mr. Ellis knowingly and voluntarily waived his Fifth Amendment privilege against self-incrimination. Without these requirements being met, the law presumes his statements

to be involuntary. “In order to be deemed voluntary, a confession must satisfy the mandates of the U.S. Constitution, the Maryland Constitution and Declaration of Rights, the United States Supreme Court’s decision in *Miranda*, and Maryland non-constitutional law.” *Knight v. State*, 381 Md. 517, 531 (2004).

I. CUSTODY

The first step in determining whether an individual is in custody is to ascertain, under the objective circumstances of the interrogation, whether a reasonable person would have felt free to leave. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995); *Moody v State*, 209 Md. App. 366, 381 (2013). If the answer is “yes,” the court must then determine whether a reasonable person in those circumstances would have understood their freedom of action was restricted to the same degree as a formal arrest. *Id.* at 382. In making this determination, the court must consider the following circumstances:

[W]hen and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning[,] whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Id. at 383-384 (quoting *Robert v. State*, 429 Md. 246, 260–61 (2012) (internal citations omitted)).

There is no question here that Mr. Ellis was in custody.

The facts of this case indicate that Mr. Ellis was not free to leave. Mr. Ellis was at his Probation Officer’s office, an inherently coercive environment. Mr. Ellis was directed by his agent

to report to the Probation Office, which he did. There, Mr. Ellis' agent proceeded to direct him to submit to questioning from the detective conducting the interview.

Given Mr. Ellis' status as being on parole, he reasonably believed that his participation in the police interview was not optional. Mr. Ellis did not feel free to leave nor to refuse his officer's direct order to be interviewed by the detective.

At the beginning of his interview, Detective McKinney made no effort to dispel the involuntary nature of the interview. To the contrary, the audio recording of the interview reveals that the detective emphasized to Mr. Ellis that he was not under arrest. Detective McKinney began the interview with "I just want to make sure you understand that you're not under arrest or anything like that." Even though Mr. Ellis was not, indeed, formally arrested, he was still clearly in custody at the time of the interview.

Factually, this case is on all fours with *Brown v. State*, 452 Md. 196 (2017), where the Court held that although police told the defendant numerous times he was not under arrest, he was in custody for purpose of Miranda. There is no question here that Mr. Ellis was in custody for *Miranda* purposes.

As a result of the nature of Mr. Ellis' custodial interrogation, the interview can be considered involuntary, many any subsequent waiving of his Miranda warning involuntary as well.

II. NO KNOWING AND VOLUNTARY WAIVER OF MIRANDA

Although a formulaic recitation of the Miranda warnings is not required, the interrogating officer must provide a "fully effective equivalent" of the standard Miranda advisements. *Miranda*, 384 U.S. at 476; see also, *Luckett*, 413 Md. at 379 ("Only if the 'totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.'")

(Citations omitted). If a suspect chooses to waive his Fifth Amendment privilege after receiving these warnings, the resulting statement will be admissible only if the State can meet its “heavy burden,” *Luckett*, 413 Md. at 35, that the relinquishment of the right was knowing and voluntary under the “high standar[d] of proof for the waiver of constitutional rights [set forth] in *Johnson v. Zerbst*, 304 U.S. 458 (1938).” *White v. State*, 374 Md. 232, 251 (2003).

Here, Mr. Ellis did not validly waive his right to remain silent and right to counsel. The Supreme Court in *Moran v. Burbine*, 475 U.S. 412 (1986), stated that the heavy burden of the waiver of the right to counsel and right to remain silent has two parts:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the ‘totality of the circumstances surrounding the interrogation’ reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Burbine, 475 U.S. at 421.

With respect to the second part noted above in *Burbine*, the State bears the heavy burden in persuading the court that a person’s waiver of his or her Constitutional rights was “knowing and intelligent,” *Miranda*, 384 U.S. at 444, meaning that the waiver was made with a full awareness of both the nature of the right[s] being abandoned and the consequences of the decision to abandon it.” *Burbine*, 475 U.S. at 421. The State has the heavy burden of proving that Mr. Ellis comprehended the warnings. *Tague v. Louisiana*, 444 U.S. 469 (1980). In short, the State must show that first, the statement was the product of a free and deliberate choice rather than intimidation, coercion, or deception, and second, the waiver must have been made with a full

awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Burbine*, 475 U.S. at 421.

In determining the constitutional adequacy of a suspect's waiver of the *Miranda* rights, the totality of the warnings must be examined. See *Moran*, 475 U.S. at 421 ("Only if the 'totality of the circumstances surrounding the interrogation' reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." (Citation omitted)). But if the warnings, viewed in the totality, in any way misstate the suspect's rights to silence and counsel, or mislead or confuse the suspect with respect to those rights, then the warnings are constitutionally infirm, rendering any purported waiver of those rights constitutionally defective and requiring suppression of any subsequent statement. *Miranda*, 384 U.S. at 486 (stating that "the warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisite to the admissibility of any statement by a defendant").

Before reading Mr. Ellis his rights, the Detective commented "like I told you when I first talked to you, I am investigating a case where a woman got sexually assaulted over the fourth of July weekend. I just wanted to talk to you about it, rule you out" and "one of the things I do want to do just before we get started is just to make sure you understand that you're not under arrest or anything like that, I just want to read you your *Miranda* rights." These comments effectively vitiated Mr. Ellis's right to remain silent, which includes the fact that anything he says will be used against him. The assertion that the purpose of the interview is to "rule [him] out" went again the *Miranda* warning that anything he says may be used against him.

In *Lee v. State*, 418 Md. 136 (2011), the Court forcefully rejected the Detective's comments that vitiated the *Miranda* warnings. The Court stated:

We hold that “*this is just between you and me bud*” was effectively a promise of confidentiality that directly contradicted the early Miranda advisement that “anything you say can and will be used against you in court of law” thereby vitiating Petitioner’s prior waiver, and rendering in violation of Miranda everything that Petitioner said to the detective during the remainder of the interrogation.

Id.

This coercive tactic further vitiated Mr. Ellis’s understanding of his *Miranda* rights because his comments implied that his right to silence, rather than being of benefit to him as a constitutional protection of his rights as a defendant, would rather be used against him as an implied indication of his guilt.

Similarly, the audio recording of this advisement must therefore be considered because the Detective’s speedy, oral delivery of these warnings, hindered a reasonable person’s understanding of the rights being waived. The speed in which the *Miranda* rights and warnings were delivered would confuse any reasonable person. Detective McKinney undermined the importance of Mr. Ellis’s rights by reading them very quickly, hardly pausing between statements to allow Mr. Ellis to process the importance of each of these rights and their potential benefit to him. Detective McKinney rushed through the Miranda Warnings in 39 seconds.

Given the speed and perfunctory reading of vital constitutional rights, and the initial violation of Mr. Ellis’ rights, the State cannot demonstrate that Mr. Ellis *implicitly understood* the *Miranda* warnings nor the significance of relinquishing them. This tactic of speeding through significant rights and requesting a speedy relinquishment of such rights vitiates the prophylactic purposes of *Miranda* and is designed to ensure that a suspect cooperates with police by waiving the right to remain silent.

Mr. Ellis did not understand his *Miranda* rights such that he could be deemed to have knowingly waived them when he signed the waiver form – not even implicitly. The record in this case plainly shows that the State cannot meet its “heavy burden,” and that Mr. Ellis did not, accordingly, waive his rights under *Miranda*. It follows that, “absent an appropriate rights warning, statements made during a custodial interrogation are made involuntarily and so are in violation of a defendant's right against self-incrimination.” *Abeokuto v. State*, 391 Md. 289, 331 (2006).

III. INVOLUNTARINESS

“[U]nder Maryland criminal law, independent of any federal constitutional requirement, if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage, in that he will be given help or some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible.” *Hillard v. State*, 286 Md. 145 (1979) (emphasis added); see also *Hill v. State*, 418 Md. 62 (2011). The first component of the Hillard test is an objective one, measured from the perspective of a layperson in the defendant's situation, under which, “a singular statement communicated to the suspect may be sufficient to qualify as an inappropriate offer of help held out to the suspect.” *Winder v. State*, 362 Md. 275, 317 (2001). The second component requires the court to “examine the particular facts and circumstances surrounding the confession” to determine whether the defendant made the confession in reliance on the statement. *Id.* at 312.

The State bears the burden of proving, by a preponderance of the evidence, that the statements are made freely and voluntarily. *Id.*, at 306. That burden is “heavy.” *Luckett*, 413 Md. at 375. Whether a confession is free of coercion depends on the totality of the circumstances including “where the interrogation was conducted, its length, who was present, how it was

conducted, its content, whether the defendant was given Miranda warnings, the mental and physical condition of the defendant, the age, background, experience, education, character, and intelligence of the defendant, when the defendant was taken before a court commissioner following arrest, and whether the defendant was physically mistreated, physically intimidated or psychologically pressured.” *Hof v. State*, 337 Md. 581, 596–97 (1995) (citations omitted).

The Court of Appeals has consistently applied a broad definition of what constitutes an “improper promise.” From *Nicholson v. State*, 38 Md. 140, 153 (1873) (“any promise of worldly advantage”) (repeated in *Hof* and *Winder*) to more recent characterizations of “any official promise which redounds to the benefit or desire of the defendant.” *Stokes v. State*, 289 Md. 155, 160 (1980). The Court’s language has been consistently inclusive and included any implication of “help or some special consideration” (*Hillard*), and any statement inferring “the advantage of non-prosecution” or some of other form of assistance in *Hill*, 418 Md. at 62.

In *Hillard*, the Court reversed a conviction due to improper inducement when a detective stated to a defendant that he would “go to bat” for him and speak to the State’s Attorney’s Office. *Hillard*, 286 Md. at 148. More recently, in *Hill*, the Court of Appeals reversed a conviction due to improper inducement when a detective stated to a defendant that the victim did not want to see him get into trouble but wanted an apology. *Hill*, 418 Md. at 62. In *Jones v. State*, 48 Md. App. 726 (1981), the Court of Special Appeals held that an officer’s promise of “some help” in exchange for the truth was an improper inducement; see also *In re Joshua David C.*, 116 Md. App. 580 (1997) (offering to give young defendant a T-shirt in exchange for statement was inducement); *In re Lucas F.*, 68 Md. App. 97 (1986) (Detective’s statement imploring defendant to tell the truth so there would be no problem later was unlawful inducement and “flew in the face of Hillard.”); *Streams v. State*, 238 Md. 278, 282-83 (1965) (promise of official help in getting probation if

defendant confessed was improper); *Lubinski v. State*, 180 Md. 1, 4-5 (1941) (statement by officer to defendant that giving a statement “will help you a lot,” if uncontradicted, would have been improper as defendant understood it to mean freedom); *Biscoe v. State*, 67 Md. 6, 8 (1887) (telling prisoner that “it would be better for him to tell the truth, and have no more trouble about it,” was inducement “of the strongest kind” and made subsequent confession inadmissible); *Edwards v. State*, 194 Md. 387 (1950) (officer’s exhortation to defendant to tell the truth, coupled with showing defendant a letter from a third party which suggested that it was better for a person accused of a crime to do what the officers told him to do, constituted inducement); *Johnson v. State*, 348 Md. 337, 347-38 (1998) (interrogating officer’s statement that if defendant confessed, he might be able to receive some sort of medical treatment at a [hospital for the criminally insane] instead of ‘being locked up for the rest of [his] life’ was an improper promise); *Knight v. State*, 381 Md. 517 (2004) (Police promise that, “if down the line, after this case comes to an end, we’ll see what the State’s Attorney can do for you, with your case, with your charges,” found to be an impermissible promise.)

As stated earlier, the circumstances of Mr. Ellis’ interrogation ensured that he believed he was not free to leave, thus making any statements given after this involuntary, including those taken after his being *Mirandized*, involuntary as well.

However, before Mirandizing Mr. Ellis, the detective also made an implied promise, *Hill*, 418 Md. 62, to Mr. Ellis that, if he decided to speak with him, then, and only then, the detective could “rule [him] out”. Such promise was improper because it implied that Detective McKinney was not trying to collect information that could later be used to prove Mr. Ellis’ guilt. This effectively vitiated Mr. Ellis’s understanding that any information he disclosed to the Detective would be held against him.

CONCLUSION

Norris Ellis respectfully requests that this Court rule that all statements made by Mr. Ellis to law enforcement are inadmissible as they were involuntarily made while he was questioned, and in violation of the United States Constitution, the Maryland State Constitution, Maryland non-constitutional law and the United States Supreme Court's ruling in *Miranda v. Arizona*.

Respectfully submitted,

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REQUEST FOR HEARING

Mr. Ellis requests that this Court set a hearing on this motion.

RaquinMercer LLC

By: Isabelle Raquin
Isabelle Raquin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January 2022, I caused a copy of the foregoing Motion to be served upon the following person(s):

Office of the State's Attorney
Frederick County
100 W Patrick St,
Frederick, MD 21701

By: Isabelle Raquin
Isabelle Raquin #1112150040